

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of the Commission's	)	IB Docket No. 02-34
Space Station Licensing Rules and Policies	)	

**COMMENTS OF THE CELLULAR TELECOMMUNICATIONS  
& INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA")<sup>1/</sup> hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") released in the above-captioned proceeding on February 28, 2002.<sup>2/</sup> The Notice seeks comments on revisions to the Commission's licensing process for satellite communications services. The proposed revisions are designed to streamline the licensing process so as to "facilitate innovation, significantly reduce administrative burdens on applicants, and expedite the provision of beneficial services to the public."<sup>3/</sup>

CTIA supports wholeheartedly the Commission's efforts to modify the satellite licensing process. Although the delays and inefficiencies of the current process are a burden for satellite

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<sup>1/</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2/</sup> In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies; 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, IB Docket Nos. 02-34, 00-248, Notice of Proposed Rulemaking and First Report and Order, FCC 02-45 (rel. Feb. 28, 2002) ("Notice").

<sup>3/</sup> Notice ¶ 1.

applicants, from CTIA's perspective, the more troubling concern is the tendency of the process to tie up for many years valuable spectrum that otherwise could be used to serve the public better.<sup>4/</sup> Moreover, the inefficiency of the process has repeatedly resulted in a "mismatch" between the amount of spectrum that the FCC projects would be needed for a particular satellite offering and therefore allocates to that service, and the actual spectrum requirements once a satellite service is ultimately available. Again, the result is that spectrum that could be made available for other uses such as CMRS is devoted to underutilized satellite allocations.

In order to rectify this "spectrum freezing" dilemma, and to achieve the Commission's stated objective "to expedite the use of scarce spectrum resources by licensees or the reassignment of spectrum returned to or reclaimed by the Commission,"<sup>5/</sup> CTIA urges the Commission to establish a process that:

- (1) Promulgates frequency allocation and service rules for satellite services before accepting license applications;
- (2) Discourages speculative applications;
- (3) Ensures real progress is made towards construction and launch of licensed satellite systems; and
- (4) Promotes redeployment of spectrum to other services if satellite proposals founder.

## **I. PROMULGATION OF FREQUENCY ALLOCATION AND SERVICE RULES**

As an initial matter, the Commission should abandon its current process of accepting satellite applications before spectrum is even allocated to a satellite service or service rules are adopted. Instead, if a new satellite service, with new frequency allocations, is proposed, the Commission should conduct a deliberative but expedited rulemaking process to consider the

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<sup>4/</sup> Notice ¶¶ 11-12.

<sup>5/</sup> Notice ¶ 11.

proposal. An important part of this rulemaking would be to determine if there is truly a need for a new allocation, or whether the proposed service could be accommodated within an existing allocation. If the allocation and service are found to be justified in the rulemaking, the Commission should adopt the technical and other “ground rules” for the service and then invite applications.

The current arrangement, whereby frequency allocations, service rules and applications are all thrown together, has the effect of complicating and delaying the ultimate resolution of the proceeding.<sup>6/</sup> In this current process, rather than focusing first on how the rules for the service should best be structured, the Commission is drawn into a dispute on the merits and demerits of the various applications as each applicant seeks to game the final rules to best support its particular application.<sup>7/</sup> Further, the process also encourages ultimately unqualified applicants to file because there are no rules in place to limit any proposal, no matter how infeasible it might be.<sup>8/</sup>

## **II. PROCESSING OF APPLICATIONS**

Once frequency allocations and service rules for a satellite service are established, the next step is for the Commission to process applications for the proposed satellite offering. The goal of this process should be to encourage applicants that have concrete and realistic plans to

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<sup>6/</sup> Notice ¶¶ 5-11.

<sup>7/</sup> See, e.g., Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Frequency Range, ET Docket No. 98-206, Memorandum Opinion and Order and Second Report and Order, FCC 02-116, ¶¶ 210-236, 253-259 (May 23, 2002) (describing the tactics of certain satellite applicants to twist the MVDDS service rules in their favor in order to favor their applications over those of other parties).

<sup>8/</sup> This approach likewise wastes Commission resources because, invariably, applicants must submit comprehensive amendments to their initial applications to conform to the rules finally adopted.

use the spectrum, instead of speculative filings that seek to “reserve” a spectrum block in the hope that the applicant will be able to obtain financing to develop and deploy a satellite offering at some point in the distant future. It is questionable whether either the “first come, first served” proposal set forth in the Notice or the proposed streamlining of current procedures are sufficient to achieve this goal.<sup>9/</sup> Both approaches can encourage speculative applications because each creates a different “race-to-file” dynamic.

With first come, first served, the process could continue for years, with service never reaching the public. For example, the first filed applicant might be licensed but then fail to implement its system. If at that time there was a lengthy queue of applications, the Commission would have to move successively down the queue, even though some applicants might not be qualified or their proposals might not be feasible. Again, spectrum would be frozen for years. Moreover, the “race to file” mentality created by a first come, first served process would encourage applicants to file as quickly as possible and for the broadest possible spectrum requirement, irrespective of whether their proposals had ripened into concrete business plans capable of implementation.

The Notice’s alternative approach of streamlining the current process, while an improvement over the status quo, could also encourage applicants to file speculative applications in order to ensure they can participate in a particular filing window. While the idea of creating an abbreviated (60 days, for example) negotiation period during which the applicants would try to resolve any mutual exclusivity would help speed the process,<sup>10/</sup> it would do little to discourage speculative applications. Simply put, the Commission’s process must do more to encourage

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<sup>9/</sup> Notice ¶¶ 28-83.

<sup>10/</sup> Notice ¶¶ 70-77.

well-reasoned, implementable applications, not hurried or speculative proposals that have little chance of success.

### **III. ENFORCEMENT OF REAL CONSTRUCTION MILESTONES**

Once licenses are issued, the Commission should task licensees with prompt and real efforts to implement their systems. In circumstances where there is no market-based incentive to use spectrum efficiently, as is the case for satellite companies who do not obtain their spectrum through auction, it is important that the Commission take steps to ensure that spectrum is not left unused or underutilized indefinitely. Construction and service milestones should be much more aggressive than they have been in the past to reflect the increasing urgency of ensuring that spectrum is not lying fallow any longer than necessary, and is redeployed as quickly as possible if the satellite offering is not able to be implemented.

As a first step, the Commission should require satellite construction contracts to be signed within nine months of license award. There is no reason why a serious licensee that has filed an application in conformity with pre-established Commission technical and service rules (as proposed above), could not execute a contract for spacecraft construction within nine months. Indeed, if the technical requirements for the satellites are already specified in the Commission's rules, the design process for a satellite system could be well underway before licenses are issued.

In addition to a contract milestone, the Commission should establish specific interim construction milestones that reflect real and measurable progress on a typical satellite construction program. These milestones should be more aggressive than prior milestones, which have in many cases not been successful in ensuring that satellite systems are deployed in a timely

manner – yet have prevented the spectrum from being redeployed for other uses.<sup>11/</sup> The licensees should be compelled to certify completion of specific interim milestones on six-month intervals and the Commission should make these filings and supporting documentation available for public review and comment. Finally, the Commission should have in place an internal program to verify milestone completion through staff review of appropriate documentation and/or site visits to manufacturing sites. Any failure to meet an interim milestone (without extension for cause beyond a licensee’s control) should render a license null and void without further Commission action.

CTIA also supports the proposed requirement that licensees spend a certain percentage of the projected costs of the satellite each year.<sup>12/</sup> Far too often, licensees have met the first milestone of a program by executing a construction contract, but the contract has provided for little effort by the manufacturer or expenditures by the licensee, for months or years. If a licensee is serious, it should have no problem directing its manufacturer to proceed and to make progress payments accordingly. CTIA would suggest that on a typical program, payment of at least 25 percent of the satellite construction cost during the first year would reflect concrete progress and should be required.

#### **IV. REDEPLOYMENT OF SPECTRUM**

In recent years, there has been a disturbing trend in certain satellite services of progress not being made, of licensees failing and of spectrum resources being unused or underutilized for extended periods of time. Perhaps this is due somewhat to the technically and financially risky nature of the satellite business. Whatever the cause, the Commission should adopt a process that

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<sup>11/</sup> Notice ¶ 103.

<sup>12/</sup> Notice ¶ 104.

gives satellite licensees a reasonable time to succeed, but that moves to reclaim spectrum if the proposed satellite service fails to materialize or founders.

As a first step in that direction, the Commission should cease to process successive applications in a satellite service until it has some degree of confidence that the licenses awarded in the first “round” or group will bear fruit. This does not mean that the Commission need defer processing subsequent applications until the prior round licensees launch systems (if processing rounds continue to be the licensing vehicle). With strict interim milestone requirements and aggressive verification and enforcement, the Commission will know whether licensees in one processing round remain committed to their projects, and if so, the Commission should have enough confidence in the service to approve additional applications. If, however, little progress is being made by the first group of licensees, then there is legitimate cause for concern regarding the economic and technical fundamentals of the particular satellite service. Under those circumstances, the Commission should refrain from issuing additional licenses and instead place itself in a position to reclaim the spectrum for other public uses if the satellite service proves non-viable.

CTIA also supports the Commission’s suggestion that it retain the authority in its rules to limit the amount of spectrum awarded to a satellite applicant in order to tailor the licensed spectrum to the needs of the applicant and to promote competitive entry.<sup>13/</sup> The Commission should expand on this concept, however, and maintain its ability to restrict spectrum assignments not only for the purpose of entertaining other competitive satellite entrants, but also to ensure that spectrum is utilized as efficiently as possible, so that spectrum can be made available for other uses if it is not required to support a particular satellite application.

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<sup>13/</sup> Notice ¶ 54.

The Commission could also take two additional steps to help ensure that spectrum that has been allocated for satellite service is redeployed for other uses if the satellite services are not deployed in a timely manner. First, in the case of a new satellite allocation, the Commission should determine by rule that if a credible satellite application is not filed within a time certain of a domestic allocation order being adopted (*e.g.*, one year), the relevant spectrum should be considered for reallocation. Second, if a satellite applicant misses its milestones, and its license is cancelled, the spectrum that had been assigned to that applicant should immediately revert to the Commission and be considered for reallocation for another service offering. These measures will help further the Commission's goal of ensuring that spectrum is utilized efficiently, which is especially difficult in the context of satellite services that are exempt from any auction requirement.



## CONCLUSION

CTIA applauds the Commission's resolve to bring more seriousness of purpose to its satellite licensing process. By adopting the approach outlined herein, CTIA submits that the Commission can achieve the goals it has articulated and avoid the recurrence of situations where spectrum is shelved for years while satellite licensees struggle to implement what, in the end, may well be services that cannot be sustained.

Respectfully submitted,

CELLULAR TELECOMMUNICATIONS  
& INTERNET ASSOCIATION

Michael F. Altschul /s/

Michael F. Altschul  
Senior Vice President, General Counsel  
1250 Connecticut Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 785-0081

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